

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
JAMES CABACCANG,
Defendant-Appellant.

No. 98-10159
D.C. No.
CR-97-00095-3-JSU

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
RICHARD T. CABACCANG,
Defendant-Appellant.

No. 98-10195
D.C. No.
CR-97-00095-2-JSU

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ROY TOVES CABACCANG,
Defendant-Appellant.

No. 98-10203
D.C. No.
CR-97-00095-1-JSU
ORDER

Filed August 26, 2003

Before: Mary M. Schroeder, Chief Judge, Alex Kozinski,
Diarmuid F. O'Scannlain, Andrew J. Kleinfeld,
Michael Daly Hawkins, Susan P. Graber,
M. Margaret McKeown, William A. Fletcher,
Raymond C. Fisher, Richard A. Paez and
Richard C. Tallman, Circuit Judges.

Order;
Special Concurrence by Judge Graber;
Dissent by Judge Kozinski

ORDER

In *United States v. Cabaccang*, 332 F.3d 622, 637 (9th Cir. 2003), we remanded Roy Cabaccang's conviction on Count I for reconsideration in light of our holding that he did not violate 21 U.S.C. § 952. We now GRANT appellants' motion for clarification as to Count VI, and we remand that count to the district court. If the district court affirms Roy Cabaccang's conviction on Count I, his conviction and sentence on Count VI shall stand. If the district court reverses the conviction on Count I, it shall reconsider Roy Cabaccang's sentence on Count VI. We DENY appellants' motion to remand the remaining counts, including Count II, to the district court.

GRABER, Circuit Judge, with whom McKEOWN, Circuit Judge, joins, specially concurring:

I continue to believe that the convictions and sentences should be affirmed in their entirety, for the reasons stated in the dissent that I joined. However, I have no objection to the majority's desire to clarify its holding. Accordingly, I concur specially in the order clarifying the majority's opinion.

KOZINSKI, Circuit Judge, with whom O'SCANNLAIN and TALLMAN, Circuit Judges, join, dissenting:

I respectfully dissent. Because I continue to believe that we should affirm, I cannot join an order that further unravels the district court's judgment.

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